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13 UNITED STATES DISTRICT COURT

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15 CENTRAL DISTRICT OF CALIFORNIA

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17 CHARLES WEATHERFORD,

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Petitioner,

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v.

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SAFEGUARD METALS, LLC, a
21 California limited liability company,
JEFFREY SANTULAN, individually,

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Respondents.

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CASE NO. 22-cv-07239-MEMF-MAR

**REPLY MEMORANDUM IN
SUPPORT OF PETITION TO
CONFIRM ARBITRATION AWARD**

HEARING DATE: 03/16/2023

HEARING TIME: 10:00 a.m.

**Hon. Maame
Ewusi-Mensah Frimpong**

Pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 9, 13, Petitioner,

Charles Weatherford (“Petitioner” or “Weatherford”), hereby submits this Reply

Memorandum in Support of his Petition to Confirm Arbitration Award [Dkt 1],

which is set for hearing at the date and time indicated above, and, in support



thereof, states as follows:

REPLY MEMORANDUM

Petitioner brought an arbitration against Respondents, Jeffrey Santulan (“Santulan”) and Safeguard Metals, LLC (“Safeguard Metals” and, together with Santulan, “Respondents”) for misrepresentations in connection with investment advice and sales of purportedly numismatic and semi-numismatic coins. [Dkt 1-1]. On September 30, 2022, the arbitrator issued a final award in favor of Petitioner [Dkt. 1-4], who now seeks confirmation by way of entry of a final judgment thereon pursuant to Section 9 of the Federal Arbitration Act.

FACTUAL BACKGROUND

On October 4, 2022, Petitioner timely filed this Petition to Confirm the Arbitration Award (the “Petition”), requesting the Court enter final judgment in his favor on the award, as well as to retain jurisdiction to enforce the judgment entered thereon. [Dkt. 1].

As provided in the arbitration agreement and Federal Arbitration Act, Petitioner can petition for confirmation of an award to have it confirmed and entered as a final judgment. The Petition includes all of the necessary elements required by 9 U.S.C. § 13, including:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

[9 U.S.C. § 13]

The requirements of FAA §13 are satisfied by the Petition. Specifically, the agreement to arbitrate is attached as exhibits to the Statement of Claim as Exhibit 1 to the Petition. [Dkt. 1-1]. There was no additional arbitrator or umpire selected or appointed beyond that reflected in the letter of appointment attached to the Petition as Exhibit 2. [Dkt. 1-2]. There was no extension of time, and the hearing took place in accordance with the schedule set forth in the Arbitrator's scheduling order attached to the Petition as Exhibit 3. [Dkt. 1-3]. Lastly, the award is attached to the Petition as Exhibit 4. [Dkt. 1-4]. All the notices and other papers regarding confirmation have been filed in this action, to which Respondents have received notice.

DISCUSSION

A. The Petition is a “motion” under applicable law and ripe for confirmation

Under Section 6 of the Federal Arbitration Act, any application to the Court — which includes a petition — is treated as a motion. 9 U.S.C. § 6 (“Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.”) The FAA does not provide any other means for confirmation, and courts across the country treat petitions for confirmation as

1 motions. *See D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 108 (2nd Cir.
2 2006). *See Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 962 F.3d 576,
3 585 (D.C. Cir. 2020) (“By subjecting petitions for confirmation to “the law for the
4 making and hearing of motions,” the FAA simply directs that the initial filing of
5 the party seeking confirmation must be treated as a motion rather than a
6 pleading”); *Poseidon Compania Naviera S.A. v. Gen. Co. for Silos &*
7 *Warehousing*, No. CIV. A. 90-1436, 1991 WL 149703, at *1 (D.D.C. July 15,
8 1991) (“Petition to Confirm must be treated as a motion pursuant to Section 6 of
9 the Federal Arbitration Act (“Act”)); *CPR Mgmt., S.A. v. Devon Park*
10 *Bioventures, L.P.*, 19 F.4th 236, 243 (3d Cir. 2021) (“a petition to confirm an
11 arbitration award under the FAA is “a motion, not a pleading.”). *See also,*
12 *Profitstreams, LLC v. Ameranth, Inc.*, No. 11 CV 0766 MMA JMA, 2011 WL
13 3610696, at *3 (S.D. Cal. Aug. 17, 2011) (holding that the petition reasonably may
14 proceed as a motion under the FAA, and is subject to the Federal Rules governing
15 motion practice, not pleadings.); *ISC Holding AG v. Nobel Biocare Finance AG*,
16 688 F3d 98, 115-116 (2d Cir. 2012) (holding that a petition to compel arbitration
17 brought under 9 U.S.C. § 4 could not be dismissed pursuant to Rule 41(a)(1)(A)(i)
18 because a petition was a motion, and not a pleading subject to an answer).
19

20 Respondents responded to the Petition by appearing and filing an answer
21 [Dkt. 13] (the “Answer”), which should be treated as a response to the
22 petition/motion. *Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 962 F.3d.
23
24

1 at 585; *Phuc Quang Le v. Humphrey*, 2010 WL 11549925 (N.D. Ga. Nov. 5,
 2 2010), at *1.

3 Thus, this matter is ripe for confirmation.
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5 **B. The arbitration award must be confirmed as a final judgment**

6 Absent relief from the award under Sections 10 or 11 of the FAA, the award
 7 must be confirmed as a final judgment under 9 U.S.C. §§ 9 (requiring entry of
 8 judgment on an award absent relief) and 13 (requiring docketing of a judgment).
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10 See *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 687 (2008);
 11 *ValueSelling Associates, LLC v. Temple*, 2011 WL 2532560 (S.D.Cal. June 23,
 12 2011); *Int'l Thunderbird Gaming Corp. v. United Mexican States*, 473 F.Supp.2d
 13 80, 83 (D.D.C. 2007) (“in the absence of a legal basis to vacate, this court has no
 14 discretion but to confirm the award”).
 15

16 In their Answer, Respondents raise affirmative defenses but do not provide
 17 any basis for granting relief from the Arbitration Award under Sections 10 or 11 of
 18 the FAA. As those are the exclusive grounds for relief, there is no basis to deny the
 19 Petition. See *Hall Street Assocs.*, 552 U.S. at 584, 594. Further, the burden of
 20 establishing grounds for vacating an arbitration award is on the party seeking to
 21 vacate the award. *Kim-CI v. Valent Biosciences Corp.*, 756 F.Supp.2d 1258, 1272
 22 (E.D.Cal. Nov. 22, 2010); *United States Life Ins. V. Superior National Ins. Co.*,
 23 591 F.3d 1167, 1173 (9th Cir. 2010). See also, *Kyocera Corp. v. Prudential-Bache*
 24 *Trade Services, Inc.*, 341 F.3d 987, 1002-3 (9th Cir. 2003) (holding that appellant
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1 Kyocera's assertions that the arbitrators had "exceeded their powers" merely
 2 recited the statutory standard set forth by Section 10 of the FAA, and finding that
 3 the arbitration award's confirmation by the district court was correct in holding
 4 that "Kyocera has presented no valid ground for vacating, modifying or correcting
 5 the arbitral award under the statutory -and only proper- standard of review").
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7 Here, Respondents assert in their affirmative defenses that the arbitrator
 8 exceeded his powers and that there was "evident material miscalculation of
 9 figures" referred to in the Award, but Petitioners present no evidence to support
 10 these assertions or any other conduct that approaches the type that warrants
 11 vacatur, modification or correction under the FAA.
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13 Moreover, relief against an award is only appropriate in extreme
 14 circumstances, and neither erroneous legal conclusions nor unsubstantiated factual
 15 findings justify federal court review of an arbitral award under the statute. *See Id.*,
 16 at 994; *ValueSelling Associates*, 2011 WL at *3. In fact, confirmation of the award
 17 is required even in the face of erroneous findings of fact or misrepresentations of
 18 law. *French v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 784 F.2d 902, 906 (9th
 19 Cir. 1986); *George Day Construction Co. v. United Brotherhood of Carpenters*,
 20 722 F.2d 1471, 1477 (9th Cir. 1984).
 21

22 Judicial review of arbitration awards is "both limited and highly deferential"
 23 and the award must be confirmed unless it is completely irrational" or constitutes a
 24 "manifest disregard of the law". *French*, 784 F.2d at 906; *Am. Postal Workers*
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Union AFL-CIO v. U.S. Postal Serv., 682 F.2d 1280, 1284 (9th Cir. 1982); *Comedy Club, Inc. v. Improv West Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009); *Poweragent Inc. v. Elec. Data Sys. Corp.*, 358 F.3d 1187, 1993 (9th Cir. 2004). No extreme circumstance, or manifest disregard of the law, has been raised by Respondents or is presented by this situation. The award was issued in the normal course.

CONCLUSION

The Arbitration Award was properly entered on September 30, 2022, finding Respondents liable for using materially false and misleading statements to induce Claimant to invest with Respondent Safeguard, providing biased and self-interested investment advice, and misrepresenting and concealing mark-ups and providing materially false and inflated valuations of Claimant’s accounts (the “Award”) [Dkt. 1-4].

This Petition satisfies the requirements of FAA §§ 9 and 13, and there is no basis on which the Award could be “vacated, modified or corrected” under FAA §§ 10 or 11. The Court should confirm the Award.

WHEREFORE, the Court should confirm the Arbitration Award and enter final judgment thereon in the form proposed herewith as Exhibit 1, and grant such other relief as the Court deems just and appropriate.

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2 DATED this 9th day of February, 2023.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and that on the 9th day of February, 2023, the foregoing **MEMORANDUM IN SUPPORT OF PETITION TO CONFIRM ARBITRATION AWARD**, and exhibits, was served by email on the represented defendants to:

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